

## **Fair Labor Standards Act (FLSA) – New Regulations for White-Collar Employees**

### **August 23, 2004**

The Fair Labor Standards Act (FLSA) requires employers to pay employees overtime (1 ½ times their regular rate of pay) if they work over 40 hours per week, except (white collar employees) administrative, executive, professional, and outside sales personnel (employees who make sales, obtain orders or contracts for services, or who are customarily and regularly engaged away from the employer's place in performing such primary duty). The exception also includes teachers, medical doctors, lawyers, (computer professionals paid at \$27.63 per hour). New regulations for white-collar employees take place on August 23, 2004.

#### **Highlights of the 2004 rule changes:**

1. **New Minimum Salary Test for Exempt Employees** - The employee is paid at least \$455 a week and is paid on a salary basis (not hourly basis). This applies to both full-time and part-time employees (no conversion to full-time at all). Dual employment (salaries paid by two state agencies must be added up for this salary test).
2. To meet a salary test, in addition to \$455 a week,
  - An employee regularly receives a predetermined amount of compensation each pay period (at least weekly, or biweekly, semimonthly, monthly)
  - An employee's compensation cannot be reduced because of variations in the quality or quantity of the work performed
  - An employee must be paid the full salary for any week in which the employee performs any work
  - An exempt employee need not be paid for any workweek when no work is performed
  - DOL allows for pay reduction on a daily basis due to disciplinary actions (a major change from DOL) – The State currently uses one-week increments for pay reduction
3. The employee must meet the standard duties test such as:
  - a. Primary duty is office work directly related to management policies or general business operations;
  - b. Regularly exercise discretion and make independent judgment on matters of significance.
  - c. Combined exemption may be applied (administrative, executive, professional, etc.)
4. Highly compensated employees (\$100,000 per year, may be prorated) who also meet at least one duty test.
5. Employers may make deductions from an exempt employee's pay (in full-day increment) for violation of certain workplace conduct rules. (State is still doing full-week pay deduction).
6. Budget-required furlough – overtime eligible during the furlough week.

## Questions:

1. Board, lodging or other facilities – The minimum salary of \$455 do not include the “lodging, boarding or other facilities” incurred by an employer.
2. What are permitted pay deductions?
  - a. Leave
  - b. Disciplinary deduction – for major safety rules
  - c. Disciplinary deduction – for workplace conduct rules
  - d. Jury duty, military leave, attendance as a witness
  - e. Initial/terminal weeks of employment
  - f. Partial day pay deductions under the FMLA
3. Can we provide extra compensation – comp time, administrative leave (hourly basis) to exempt employees?
4. Can we schedule exempt employee work schedule and require them to work 40 hour per week?
5. What happens if improper salary deduction was made?
  - a. An actual practice of improper deductions from salary will result in the loss of the exemption:
    - i. During the time period in which improper deductions were made
    - ii. For employees in the same job classifications
    - iii. For employees working for the same managers responsible for the actual improper salary deductions
6. What can we do to correct the improper salary deduction?
  - a. DOL allows “Safe Harbor” which says that isolated or inadvertent improper deductions will not result in the loss of exempt status if:
    - i. Employer reimburses the employee
    - ii. Employer has a clearly communicated policy prohibiting improper deductions and includes a complaint mechanism
    - iii. Employer makes a good faith commitment to comply in the future
  - b. Safe Harbor won’t be applicable if an employer willfully violates the policy by continuing to make improper deductions after receiving employee complaints.
7. What should HR do now?

## HR office

Communicate FLSA regulations to employees (preferably in Employee Handbook) including:

- Develop a process for employees to complain about exemption designation
- Develop a process for correcting improper salary reduction, i.e., reimburse the incorrect deduction
- Develop a process for unpaid disciplinary suspensions

- Distribute FLSA policy to employees
- Inform employees of their exemption status in writing and their right to request a review of their FLSA designation
- Apply new minimum salary test to part-time employees and re-designate exemption status
- Assure part-time employees not exceeding 40 hours a week

### **Payroll/budget**

- HR/Budget officer identify employees (full-time or part-time) annual pay
- Agencies conduct internal review of duties by position basis, particularly exempt positions
- Alert supervisors of potential exemption status change to reduce overtime liability beginning August 23, 2004
- For monthly employees, multiply by 12 months
- Do not convert part-time to full-time pay calculation

8. What is the best evidence of a clearly communicated policy:
  - a. A written policy distributed to employees prior to pay deductions
  - b. Provide a copy of the policy to employees at the time of hire or when an employee's position is designated as an exempt position
  - c. Allow employees opportunities to review and challenge exemption status designation
  - d. Publish the policy in an employee handbook
  - e. Publish the policy on the employer's Intranet
9. Where can I get more information?

<http://www.dol.gov/esa/regs/compliance/whd/fairpay/main.htm>

<http://www.dol.gov/esa/regs/compliance/whd/whdcomp.htm>

[http://www.dol.gov/dol/allcfr/ESA/Title\\_29/Chapter\\_V.htm](http://www.dol.gov/dol/allcfr/ESA/Title_29/Chapter_V.htm)